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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

NELSON, MICHAEL B

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

12/23/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/580,831	Applicant(s) KANZAKI, KEIZOU	
	Examiner MICHAEL B. NELSON	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/28/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 6-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 May 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/25/06; 10/06/06; 02/27/06</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites the phrase "void parts" which is vague and indefinite in that it is unclear if the void parts relate to venting holes in the container or merely portions of an indicia which lack pigment (i.e. negative indicia or portions of a substrate which are void of indicia). Give the disclosure in the instant specification (i.e. page 10) where the void part, 11, is listed as opposed to solid pattern parts 12 and 14, the term will be taken as referring to contrasting pigmented areas (i.e. two negative images as in Fig. 2 A and B).
3. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites the phrase "near" which is vague and indefinite in that it is unclear how close the port forming means need to be to the vapor release seal part to be considered "near."

Information Disclosure Statement

4. The references cited in the Search Report mentioned in the IDS filed on 10/06/06 have been considered, but will not be listed on any patent resulting from this application because they were not provided on a separate list in compliance with 37 CFR 1.98(a)(1). In order to have the

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references printed on such resulting patent, a separate listing, preferably on a PTO/SB/08A and 08B form, must be filed within the set period for reply to this Office action.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1, 3, 6, 11, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oshima et al. (U.S. 4,834,247), and further in view of Tucker (U.S. 2003/0155354).

Regarding claim 1, Oshima et al. discloses a hermetically heat-sealed plastic food container with a vapor release seal part which opens at high pressures (See Abstract). Oshima et al. does not disclose markings which indicate when the vapor release seal part is opened. Tucker discloses a plastic food container which vents during microwave cooking ([0096]) and which is provided with differing colors for the lid and the base material in order to indicate whether the lid is opened (i.e. venting) or closed ([0137]-[0138]).

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The inventions of both Oshima et al. and Tucker are drawn to the field of microwavable venting food containers and therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the materials for the lid and base material in the container of Oshima et al. by using different colors as taught by Tucker for the purposes of imparting indicating means for informing the user if the container is opened or closed.

Regarding claims 3, 6, 11, 14 and 15, modified Oshima et al. discloses all of the limitations as set forth above. Additionally, Tucker discloses first and second colors ([0137]). Oshima et al. discloses the vapor release seal part is formed continuously along a peripheral edge seal of the container (Fig. 1). A plastic pouch is also disclosed in the invention of Oshima et al. (Fig. 6). The seal portion of the tray embodiment of Oshima et al. has flange parts and a lid with the heat seal part extending towards the inside of the container (Fig. 1 and C2, L5-25).

8. Claims 2, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oshima et al. (U.S. 4,834,247) in view of Tucker (U.S. 2003/00155354) as applied to claim 1 above and further in view of Isakson et al. (U.S. 4,640,838) and further in view of Scott et al. (U.S. 6,428,867).

Regarding claims 7 and 8, modified Oshima et al. discloses all of the limitations as set forth above. Modified Oshima et al. does not disclose that the valve member be separate from the peripheral edge or any particular indicia. Isakson et al. discloses a valve for a hermitically sealed pouch which is not located along the periphery (See Abstract and Fig. 2). The valve is of a similar type as that of Oshima et al. in that it is a flap held with an adhesive which is designed to disengage upon microwave cooking (Fig. 5 and C5, L15-45). The embodiment of Isakson et

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al. in Fig. 6 comprises a slit. The placement of the valve a distance away from the peripheral sealed edges of the container allows for food inside the container to be contained more effectively even after the valve is opened by the steam pressure (i.e. if the valve were along the side sealed edges when the container were removed from the microwave liquid could spill out the sides).

The inventions of both modified Oshima et al. and Isakson et al. are drawn to the field of microwaveable vented containers and therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the vent placement in the container of modified Oshima et al. by placing the valve a distance from the edges of the container as taught by Isakson et al. for the purposes of imparting improved food containing ability when the valve is opened.

Modified Oshima et al. does not disclose the patterned indicia as recited in instant claim 2. Scott et al. discloses a flap opening for a package container with indicia on the flap and the base material corresponding to each other as negative images (See Figs 2, 5 and 6). Scott et al. discloses that such a pattern reveals if the flap has been opened (i.e. tamper indicating) (C5, L65-C7, L5).

The inventions of both modified Oshima et al. and Scott et al. are drawn to the field of packaging containers with flap openings and therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the flap of modified Oshima et al. by adding the indicia as taught by Scott et al. for the purposes of imparting tamper indication.

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9. Claims 9, 10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oshima et al. (U.S. 4,834,247) in view of Tucker (U.S. 2003/00155354) as applied to claims 1 and 11 above, and further in view of Sato (GB 2,358,175).

Regarding claims 9, 10, 12 and 13, modified Oshima et al. discloses all of the limitations as set forth above. Modified Oshima et al. does not explicitly disclose the limitations of claims 9, 10, 12 and 13. Sato discloses a standing, branched base type microwaveable pouch (Fig. 1) with a cutout portion (Fig. 4) for the venting seal (See Abstract, part 21 is the exhaust opening) which can be used as a pouring port (Fig. 5). The invention of Sato is directed towards a specific marketable embodiment of a vented microwavable pouch which is directed towards the sterilization of, inter alia, baby feeding apparatuses (Page 1).

The inventions of both modified Oshima et al. and Sato are drawn to the field of microwavable venting pouches and therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the pouch of modified Oshima et al. by using the pouring application of the vent port as taught by Sato for the purposes of imparting improved utility and marketability as a sterilization tool.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL B. NELSON whose telephone number is (571) 270-3877. The examiner can normally be reached on Monday through Thursday 6AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MN/

09/25/08

/Callie E. Shosho/

Supervisory Patent Examiner, Art Unit 1794